SECOND DIVISION

[G.R. No. 128448. February 1, 2001]

SPOUSES ALEJANDRO MIRASOL and LILIA E. MIRASOL, *petitioners, vs.* THE COURT OF APPEALS, PHILIPPINE NATIONAL BANK, and PHILIPPINE EXCHANGE CO., INC., *respondents.*

D E C I S I O N

QUISUMBING, *J.*:

This is a petition for review on *certiorari* of the decision of the Court of Appeals dated July 22, 1996, in CA-G.R. CV No. 38607, as well as of its resolution of January 23, 1997, denying petitioners motion for reconsideration. The challenged decision reversed the judgment of the Regional Trial Court of Bacolod City, Branch 42 in Civil Case No. 14725.

The factual background of this case, as gleaned from the records, is as follows:

The Mirasols are sugarland owners and planters. In 1973-1974, they produced 70,501.08 piculs[1] of sugar, 25,662.36 of which were assigned for export. The following crop year, their acreage planted to the same crop was lower, yielding 65,100 piculs of sugar, with 23,696.40 piculs marked for export.

Private respondent Philippine National Bank (PNB) financed the Mirasols sugar production venture for crop years, 1973-1974 and 1974-1975 under a crop loan financing scheme. Under said scheme, the Mirasols signed Credit Agreements, a Chattel Mortgage on Standing Crops, and a Real Estate Mortgage in favor of PNB. The Chattel Mortgage empowered PNB as the petitioners attorney-in-fact to negotiate and to sell the latters sugar in both domestic and export markets and to apply the proceeds to the payment of their obligations to it.

Exercising his law-making powers under Martial Law, then President Ferdinand Marcos issued Presidential Decree (P.D.) No. 579[2] in November, 1974. The decree authorized private respondent Philippine Exchange Co., Inc. (PHILEX) to purchase sugar allocated for export to the United States and to other foreign markets. The price and quantity was determined by the Sugar Quota Administration, PNB, the Department of Trade and Industry, and finally, by the Office of the President. The decree further authorized PNB to finance PHILEXs purchases. Finally, the decree directed that whatever profit PHILEX might realize from sales of sugar abroad was to be remitted to a special fund of the national government, after commissions, overhead expenses and liabilities had been deducted. The government offices and entities tasked by existing laws and administrative regulations to oversee the sugar export pegged the purchase price of export sugar in crop years 1973-1974 and 1974-1975 at ₱180.00 per picul.

PNB continued to finance the sugar production of the Mirasols for crop years 1975-1976 and 1976-1977. These crop loans and similar obligations were secured by real estate mortgages over several properties of the Mirasols and chattel mortgages over standing crops. Believing that the proceeds of their sugar sales to PNB, if properly accounted for, were more than enough to pay their obligations, petitioners asked PNB for an accounting of the proceeds of the sale of their export sugar. PNB ignored the request. Meanwhile, petitioners continued to avail of other loans from PNB and to make unfunded withdrawals from their current accounts with said bank. PNB then asked petitioners to settle their due and demandable accounts. As a result of these demands for payment, petitioners on August 4, 1977, conveyed to PNB real properties valued at ₱1,410,466.00 by way of *dacion en pago,* leaving an unpaid overdrawn account of ₱1,513,347.78.

On August 10, 1982, the balance of outstanding sugar crop and other loans owed by petitioners to PNB stood at ₱15,964,252.93. Despite demands, the Mirasols failed to settle said due and demandable accounts. PNB

then proceeded to extrajudicially foreclose the mortgaged properties. After applying the proceeds of the auction sale of the mortgaged realties, PNB still had a deficiency claim of ₱12,551,252.93.

Petitioners continued to ask PNB to account for the proceeds of the sale of their export sugar for crop years 1973-1974 and 1974-1975, insisting that said proceeds, if properly liquidated, could offset their outstanding obligations with the bank. PNB remained adamant in its stance that under P.D. No. 579, there was nothing to account since under said law, all earnings from the export sales of sugar pertained to the National Government and were subject to the disposition of the President of the Philippines for public purposes.

On August 9, 1979, the Mirasols filed a suit for accounting, specific performance, and damages against PNB with the Regional Trial Court of Bacolod City, docketed as Civil Case No. 14725.

On June 16, 1987, the complaint was amended to implead PHILEX as party-defendant.

The parties agreed at pre-trial to limit the issues to the following:

1. The constitutionality and/or legality of Presidential Decrees numbered 338, 579, and 1192;

2. The determination of the total amount allegedly due the plaintiffs from the defendants corresponding to the allege(d) unliquidated cost price of export sugar during crop years 1973-1974 and 1974-1975.[3]

After trial on the merits, the trial court decided as follows:

WHEREFORE, the foregoing premises considered, judgment is hereby rendered in favor of the plaintiffs and against the defendants Philippine National Bank (PNB) and Philippine Exchange Co., Inc. (PHILEX):

(1)Declaring Presidential Decree 579 enacted on November 12, 1974 and all circulars, as well as policies, orders and other issuances issued in furtherance thereof, unconstitutional and therefore, NULL and VOID being in gross violation of the Bill of Rights;

(2) Ordering defendants PNB and PHILEX to pay, jointly and severally, plaintiffs the whole amount corresponding to the residue of the unliquidated actual cost price of 25,662 piculs in export sugar for crop year 1973-1974 at an average price of P300.00 per picul, deducting therefrom however, the amount of P180.00 already paid in advance plus the allowable deductions in service fees and other charges;

(3) And also, for the same defendants to pay, jointly and severally, same plaintiffs the whole amount corresponding to the unpaid actual price of 14,596 piculs of export sugar for crop year 1974-1975 at an average rate of P214.14 per picul minus however, the sum of P180.00 per picul already paid by the defendants in advance and the allowable deducting (sic) in service fees and other charges.

The unliquidated amount of money due the plaintiffs but withheld by the defendants, shall earn the legal rate of interest at 12% per annum computed from the date this action was instituted until fully paid; and, finally

(4) Directing the defendants PNB and PHILEX to pay, jointly and severally, plaintiffs the sum of P50,000.00 in moral damages and the amount of P50,000.00 as attorneys fees, plus the costs of this litigation.

SO ORDERED.[4]

The same was, however, modified by a Resolution of the trial court dated May 14, 1992, which added the following paragraph:

This decision should however, be interpreted without prejudice to whatever benefits that may have accrued in favor of the plaintiffs with the passage and approval of Republic Act 7202 otherwise known as the Sugar Restitution Law, authorizing the restitution of losses suffered by the plaintiffs from Crop year 1974-1975 to Crop year 1984-1985 occasioned by the actuations of government-owned and controlled agencies.
(Underscoring in the original).

SO ORDERED.[5]

The Mirasols then filed an appeal with the respondent court, docketed as CA-G.R. CV No. 38607, faulting the trial court for not nullifying the *dacion en pago* and the mortgage contracts, as well as the foreclosure of their mortgaged properties. Also faulted was the trial courts failure to award them the full money claims and damages sought from both PNB and PHILEX.

On July 22, 1996, the Court of Appeals reversed the trial court as follows:

WHEREFORE, this Court renders judgment REVERSING the appealed Decision and entering the following verdict:

1. Declaring the *dacion en pago* and the foreclosure of the mortgaged properties valid;

2. Ordering the PNB to render an accounting of the sugar account of the Mirasol[s] specifically stating the indebtedness of the latter to the former and the proceeds of Mirasols 1973-1974 and 1974-1975 sugar production sold pursuant to and in accordance with P.D. 579 and the issuances therefrom;

3. Ordering the PNB to recompute in accordance with RA 7202 Mirasols indebtedness to it crediting to the latter payments already made as well as the auction price of their foreclosed real estate and stipulated value of their properties ceded to PNB in the *dacon* (sic) *en pago*;

4. Whatever the result of the recomputation of Mirasols account, the outstanding balance or the excess payment shall be governed by the pertinent provisions of RA 7202.

SO ORDERED.[6]

On August 28, 1996, petitioners moved for reconsideration, which the appellate court denied on January 23, 1997.

Hence, the instant petition, with petitioners submitting the following issues for our resolution:

1. Whether the Trial Court has jurisdiction to declare a statute unconstitutional without notice to the Solicitor General where the parties have agreed to submit such issue for the resolution of the Trial Court.

2. Whether PD 579 and subsequent issuances[7] thereof are unconstitutional.

3. Whether the Honorable Court of Appeals committed manifest error in not applying the doctrine of piercing the corporate veil between respondents PNB and PHILEX.

4. Whether the Honorable Court of Appeals committed manifest error in upholding the validity of the foreclosure on petitioners property and in upholding the validity of the *dacion en pago* in this case.

5. Whether the Honorable Court of Appeals committed manifest error in not awarding damages to petitioners grounds relied upon the allowance of the petition. (Underscored in the original)[8]

On the *first issue*. It is settled that Regional Trial Courts have the authority and jurisdiction to consider the constitutionality of a statute, presidential decree, or executive order.[9] The Constitution vests the power of judicial review or the power to declare a law, treaty, international or executive agreement, presidential decree, order, instruction, ordinance, or regulation not only in this Court, but in all Regional Trial Courts.[10] In *J.M. Tuason and Co. v. Court of Appeals, 3 SCRA 696 (1961)* we held:

Plainly, the Constitution contemplates that the inferior courts should have jurisdiction in cases involving constitutionality of any treaty or law, for it speaks of appellate review of final judgments of inferior courts in cases where such constitutionality happens to be in issue.[11]

Furthermore, B.P. Blg. 129 grants Regional Trial Courts the authority to rule on the conformity of laws or treaties with the Constitution, thus:

SECTION 19. *Jurisdiction in civil cases.* Regional Trial Courts shall exercise exclusive original jurisdiction:

(1) In all civil actions in which the subject of the litigations is incapable of pecuniary estimation;

The pivotal issue, which we must address, is whether it was proper for the trial court to have exercised judicial review.

Petitioners argue that the Court of Appeals erred in finding that it was improper for the trial court to have declared P.D. No. 579[12] unconstitutional, since petitioners had not complied with Rule 64, Section 3, of the Rules of Court. Petitioners contend that said Rule specifically refers only to actions for declaratory relief and not to an ordinary action for accounting, specific performance, and damages.

Petitioners contentions are bereft of merit. Rule 64, Section 3 of the Rules of Court provides:

SEC. 3. *Notice to Solicitor General*. In any action which involves the validity of a statute, or executive order or regulation, the Solicitor General shall be notified by the party attacking the statute, executive order, or regulation, and shall be entitled to be heard upon such question.

This should be read in relation to Section 1 [c] of P.D. No. 478,[13] which states in part:

SECTION 1. *Functions and Organizations* (1) The Office of the Solicitor General shallhave the following specific powers and functions:

xxx

[c] Appear in any court in any action involving the validity of any treaty, law, executive order or proclamation, rule or regulation when in his judgment his intervention is necessary or when requested by the court.

It is basic legal construction that where words of command such as shall, must, or ought are employed, they are generally and ordinarily regarded as mandatory.[14] Thus, where, as in Rule 64, Section 3 of the Rules of Court, the word shall is used, a mandatory duty is imposed, which the courts ought to enforce.

The purpose of the mandatory notice in Rule 64, Section 3 is to enable the Solicitor General to decide whether or not his intervention in the action assailing the validity of a law or treaty is necessary. To deny the Solicitor General such notice would be tantamount to depriving him of his day in court. We must stress that, contrary to petitioners stand, the mandatory notice requirement is not limited to actions involving declaratory relief and similar remedies. The rule itself provides that such notice is required in any action and not just actions involving declaratory relief. Where there is no ambiguity in the words used in the rule, there is no room for construction.[15] In all actions assailing the validity of a statute, treaty, presidential decree, order, or proclamation, notice to the Solicitor General is mandatory.

In this case, the Solicitor General was never notified about Civil Case No. 14725. Nor did the trial court ever require him to appear in person or by a representative or to file any pleading or memorandum on the constitutionality of the assailed decree. Hence, the Court of Appeals did not err in holding that lack of the required notice made it improper for the trial court to pass upon the constitutional validity of the questioned presidential decrees.

As regards the *second issue*, petitioners contend that P.D. No. 579 and its implementing issuances are void for violating the due process clause and the prohibition against the taking of private property without just compensation. Petitioners now ask this Court to exercise its power of judicial review.

Jurisprudence has laid down the following requisites for the exercise of this power: First, there must be before the Court an actual case calling for the exercise of judicial review. Second, the question before the Court must be ripe for adjudication. Third, the person challenging the validity of the act must have standing to

challenge. Fourth, the question of constitutionality must have been raised at the earliest opportunity, and lastly, the issue of constitutionality must be the very *lis mota* of the case. [16]

As a rule, the courts will not resolve the constitutionality of a law, if the controversy can be settled on other grounds.[17] The policy of the courts is to avoid ruling on constitutional questions and to presume that the acts of the political departments are valid, absent a clear and unmistakable showing to the contrary. To doubt is to sustain. This presumption is based on the doctrine of separation of powers. This means that the measure had first been carefully studied by the legislative and executive departments and found to be in accord with the Constitution before it was finally enacted and approved.[18]

The present case was instituted primarily for accounting and specific performance. The Court of Appeals correctly ruled that PNBs obligation to render an accounting is an issue, which can be determined, without having to rule on the constitutionality of P.D. No. 579. In fact there is nothing in P.D. No. 579, which is applicable to PNBs intransigence in refusing to give an accounting. The governing law should be the law on agency, it being undisputed that PNB acted as petitioners agent. In other words, the requisite that the constitutionality of the law in question be the very *lis mota* of the case is absent. Thus we cannot rule on the constitutionality of P.D. No. 579.

Petitioners further contend that the passage of R.A. No. 7202[19] rendered P.D. No. 579 unconstitutional, since R.A. No. 7202 affirms that under P.D. 579, the due process clause of the Constitution and the right of the sugar planters not to be deprived of their property without just compensation were violated.

A perusal of the text of R.A. No. 7202 shows that the repealing clause of said law merely reads:

SEC. 10. All laws, acts, executive orders and circulars in conflict herewith are hereby repealed or modified accordingly.

The settled rule of statutory construction is that repeals by implication are not favored.[20] R.A. No. 7202 cannot be deemed to have repealed P.D. No. 579. In addition, the power to declare a law unconstitutional does not lie with the legislature, but with the courts.[21] Assuming *arguendo* that R.A. No. 7202 did indeed repeal P.D. No. 579, said repeal is not a legislative declaration finding the earlier law unconstitutional.

To resolve the *third issue*, petitioners ask us to apply the doctrine of piercing the veil of corporate fiction with respect to PNB and PHILEX. Petitioners submit that PHILEX was a wholly-owned subsidiary of PNB prior to the latters privatization.

We note, however, that the appellate court made the following finding of fact:

1. PNB and PHILEX are separate juridical persons and there is no reason to pierce the veil of corporate personality. Both existed by virtue of separate organic acts. They had separate operations and different purposes and powers.[22]

Findings of fact by the Court of Appeals are conclusive and binding upon this Court unless said findings are not supported by the evidence.[23] Our jurisdiction in a petition for review under Rule 45 of the Rules of Court is limited only to reviewing questions of law and factual issues are not within its province.[24] In view of the aforequoted finding of fact, no manifest error is chargeable to the respondent court for refusing to pierce the veil of corporate fiction.

On the *fourth issue*, the appellate court found that there were two sets of accounts between petitioners and PNB, namely:

1. The accounts relative to the loan financing scheme entered into by the Mirasols with PNB (PNBs Brief, p. 16) On the question of how much the PNB lent the Mirasols for crop years 1973-1974 and 1974-1975, the evidence recited by the lower court in its decision was deficient. We are offered (sic) PNB the amount of FIFTEEN MILLION NINE HUNDRED SIXTY FOUR THOUSAND TWO HUNDRED FIFTY TWO PESOS and

NINETY THREE Centavos (Ps15,964,252.93) but this is the alleged balance the Mirasols owe PNB covering the years 1975 to 1982.

2. The account relative to the Mirasols current account Numbers 5186 and 5177 involving the amount of THREE MILLION FOUR HUNDRED THOUSAND Pesos (P3,400,000.00) PNB claims against the Mirasols. (PNBs Brief, p. 17)

In regard to the first set of accounts, besides the proceeds from PNBs sale of sugar (involving the defendant PHILEX in relation to the export portion of the stock), the PNB foreclosed the Mirasols mortgaged properties realizing therefrom in 1982 THREE MILLION FOUR HUNDRED THIRTEEN THOUSAND Pesos (P3,413,000.00), the PNB itself having acquired the properties as the highest bidder.

As to the second set of accounts, PNB proposed, and the Mirasols accepted, a *dacion en pago* scheme by which the Mirasols conveyed to PNB pieces of property valued at ONE MILLION FOUR HUNDRED TEN THOUSAND FOUR HUNDRED SIXTY-SIX Pesos (Ps1,410,466.00) (PNBs Brief, pp. 16-17).[25]

Petitioners now claim that the *dacion en pago* and the foreclosure of their mortgaged properties were void for want of consideration. Petitioners insist that the loans granted them by PNB from 1975 to 1982 had been fully paid by virtue of legal compensation. Hence, the foreclosure was invalid and of no effect, since the mortgages were already fully discharged. It is also averred that they agreed to the *dacion* only by virtue of a martial law Arrest, Search, and Seizure Order (ASSO).

We find petitioners arguments unpersuasive. Both the lower court and the appellate court found that the Mirasols admitted that they were indebted to PNB in the sum stated in the latters counterclaim.[26] Petitioners nonetheless insist that the same can be offset by the unliquidated amounts owed them by PNB for crop years 1973-74 and 1974-75. Petitioners argument has no basis in law. For legal compensation to take place, the requirements set forth in Articles 1278 and 1279 of the Civil Code must be present. Said articles read as follows:

Art. 1278. Compensation shall take place when two persons, in their own right, are creditors and debtors of each other.

Art. 1279. In order that compensation may be proper, it is necessary:

(1) That each one of the obligors be bound principally, and that he be at the same time a principal creditor of the other;

(2) That both debts consist in a sum of money, or if the things due are consumable, they be of the same kind, and also of the same quality if the latter has been stated;

(3) That the two debts are due;

(4) That they be liquidated and demandable;

(5) That over neither of them there be any retention or controversy, commenced by third persons and communicated in due time to the debtor.

In the present case, set-off or compensation cannot take place between the parties because:

First, neither of the parties are mutually creditors and debtors of each other. Under P.D. No. 579, neither PNB nor PHILEX could retain any difference claimed by the Mirasols in the price of sugar sold by the two firms. P.D. No. 579 prescribed where the profits from the sales are to be paid, to wit:

SECTION 7. x x x After deducting its commission of two and one-half (2-1/2%) percent of gross sales, the balance of the proceeds of sugar trading operations for every crop year shall be set aside by the Philippine Exchange Company, Inc,. as profits which shall be paid to a special fund of the National Government subject to the disposition of the President for public purposes.

Thus, as correctly found by the Court of Appeals, there was nothing with which PNB was supposed to have off-set Mirasols admitted indebtedness.[27]

Second, compensation cannot take place where one claim, as in the instant case, is still the subject of litigation, as the same cannot be deemed liquidated.[28]

With respect to the duress allegedly employed by PNB, which impugned petitioners consent to the *dacion en pago*, both the trial court and the Court of Appeals found that there was no evidence to support said claim. Factual findings of the trial court, affirmed by the appellate court, are conclusive upon this Court.[29]

On the *fifth issue*, the trial court awarded petitioners ₱50,000.00 in moral damages and ₱50,000.00 in attorneys fees. Petitioners now theorize that it was error for the Court of Appeals to have deleted these awards, considering that the appellate court found PNB breached its duty as an agent to render an accounting to petitioners.

An agents failure to render an accounting to his principal is contrary to Article 1891 of the Civil Code.[30] The erring agent is liable for damages under Article 1170 of the Civil Code, which states:

Those who in the performance of their obligations are guilty of fraud, negligence, or delay, and those who in any manner contravene the tenor thereof, are liable for damages.

Article 1170 of the Civil Code, however, must be construed in relation to Article 2217 of said Code which reads:

Moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. Though incapable of pecuniary computation, moral damages may be recovered if they are the proximate result of the defendants wrongful act or omission.

Moral damages are explicitly authorized in breaches of contract where the defendant acted fraudulently or in bad faith.[31] Good faith, however, is always presumed and any person who seeks to be awarded damages due to the acts of another has the burden of proving that the latter acted in bad faith, with malice, or with ill motive. In the instant case, petitioners have failed to show malice or bad faith[32] on the part of PNB in failing to render an accounting. Absent such showing, moral damages cannot be awarded.

Nor can we restore the award of attorneys fees and costs of suit in favor of petitioners. Under Article 2208 (5) of the Civil Code, attorneys fees are allowed in the absence of stipulation only if the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiffs plainly valid, just, and demandable claim. As earlier stated, petitioners have not proven bad faith on the part of PNB and PHILEX.

WHEREFORE, the instant petition is DENIED and the assailed decision of the respondent court in CA-G.R. CV 38607 AFFIRMED. Costs against petitioners.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Buena, and *De Leon, Jr., JJ.,* concur.

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[1] One picul is equivalent to 63.25 kilograms.

[2] The decree was entitled Rationalizing and Stabilizing The Export of Sugar And For Other Purposes.

[3] *Rollo*, p. 78.

[4] *Id*. at 104-105.

[5] *Id*. at 110.